

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DARREN J. BUNCH,	:	
	:	
Petitioner,	:	Civ. No. 15-2636 (RMB)
	:	
v.	:	OPINION
	:	
CAMDEN COUNTY CORRECTIONAL	:	
FACILITY,	:	
	:	
Respondent.	:	

RENÉE MARIE BUMB, United States District Judge

Petitioner Darren J. Bunch is a state prisoner incarcerated in the Camden County Correctional Facility in Camden, New Jersey. He is proceeding pro se upon a petition for writ of habeas corpus under 28 U.S.C. § 2254. Petitioner pled guilty to third degree endangering the welfare of a minor. (Pet. ¶ 5.) He received a sentence of 270 days, and parole supervision for life. (Pet. ¶ 3.) Petitioner challenges his conviction and sentence, asserting violations of his constitutional rights. (Pet. ¶ 12, Grounds One through Four.) For the following reasons, the habeas petition will be dismissed without prejudice for failure to exhaust state court remedies.

I. BACKGROUND

Petitioner has not disclosed when he pled guilty and was sentenced in state court. (Pet. ¶ 2.) Presumably as part of his

plea agreement, he did not file a direct appeal. (Pet. ¶ 8.)
Petitioner filed a post-conviction motion, but he "backed-out"
because he did not want to "deal with due to hardship and
duress" when he was informed that proceeding would undo his plea
agreement and reopen the original charges. (Pet. ¶ 12(d)).

II. DISCUSSION

Petitioner's 2254 habeas petition is governed by the
Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA").

28 U.S.C. § 2254(b) provides:

(1) An application for a writ of habeas
corpus on behalf of a person in custody
pursuant to the judgment of a State court
shall not be granted unless it appears that-

(A) the applicant has exhausted the remedies
available in the courts of the State; or

(B)(i) there is an absence of available
State corrective process; or

(ii) circumstances exist that render such
process ineffective to protect the rights of
the applicant.

On the face of the petition, it is clear that Petitioner has not
exhausted any of his state court remedies. See Lambert v.
Blackwell, 134 F.3d 506, 513 (3d Cir. 1997), cert. denied, 532
U.S. 919 (2001)(dismissing 2254 petition for failure to exhaust
state court remedies); see also Rose v. Lundy, 455 U.S. 509,
515-19 (1982)(explaining the exhaustion doctrine). Furthermore,
it is not clear from the petition that there is an absence of

available state corrective process or that circumstances exist to render any state court process ineffective to protect Petitioner's rights.

Under Rule 4 of the Rules Governing Section 2254 Cases in the United States District Courts, "[i]f it plainly appears from the petition and any attached exhibits that the petitioner is not entitled to relief in the district court, the judge must dismiss the petition and direct the clerk to notify petitioner." Petitioner should be aware that if there is no longer a state court remedy available to him, his claims may be procedurally defaulted and subject to dismissal with prejudice, absent extraordinary circumstances justifying the procedural default. See Coleman v. Thompson, 501 U.S. 722, 732, 747-48 (1991)(defining procedural default and exceptions to claims barred by procedural default). Petitioner should further be aware that dismissal of this petition without prejudice does not toll the one-year habeas statute of limitations. See 28 U.S.C. § 2254(d); Jones v. Morton, 195 F.3d 153, 160 (3d Cir. 1999)("[t]ypically, when a complaint (or habeas petition) is dismissed without prejudice, that complaint or petition is treated as if it never existed")(quoting Hull v. Kyler, 190 F.3d 88, 103-04 (3d Cir. 1999)(citations omitted)).

III. CERTIFICATE OF APPEALABILITY

Pursuant to 28 U.S.C. § 2253(c), unless a circuit justice or judge issues a certificate of appealability, an appeal may not be taken from a final order in a proceeding under 28 U.S.C. § 2254. A certificate of appealability may issue "only if the applicant has made a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). "A petitioner satisfies this standard by demonstrating that jurists of reason could disagree with the district court's resolution of his constitutional claims or that jurists could conclude the issues presented are adequate to deserve encouragement to proceed further." *Miller-El v. Cockrell*, 537 U.S. 322, 327 (2003). Applying this standard, the Court finds that a certificate of appealability shall not issue in this case because Petitioner's claims are clearly unexhausted.

III. CONCLUSION

For the foregoing reasons, the habeas petition will be dismissed for failure to exhaust state court remedies, and a certificate of appealability shall not issue. An appropriate order will be entered.

s/Renée Marie Bumb
RENÉE MARIE BUMB
United States District Judge

Dated: May 11, 2015